

Application No.: 10/572,991
Filing Date: January 10, 2007

REMARKS

Claims 32, 33 and 38-48 are presently pending. Claims 1-5, 13-19, 36 and 37 are canceled without prejudice. Support for amendments to Claim 32 and new Claims 39-48 are found in the specification as filed as follows:

Claim	Support in Specification as Filed
32	Paragraph spanning pages 13-14.
39	Original Claim 4.
40	Original Claim 5.
41	Original Claim 13.
42	Original Claim 14.
43	Original Claim 15.
44	Original Claim 16.
45	Original Claim 17.
46	Original Claim 18.
47	Original Claim 19.
48	Paragraph spanning pages 13-14.

No new matter has been added herewith. The following addresses the substance of the Office Action.

Objections

Claims 4 and 14 were objected to because of informalities. Claims 4 and 14 are canceled, thereby obviating the objections.

Anticipation

Smith

Claims 1-3, 5, 32 33 and 38 were rejected under 35 U.S.C. § 102(b) as being anticipated by Smith (U.S. Patent No. 2,244,027). Smith discloses a teat dilator, which is a simple variation on the dilators known in the art and previously raised by the Examiner.

Without acquiescing and solely to expedite prosecution, the Applicant has canceled Claims 1-5, 13-19, 36 and 37, which were directed to devices. Claims 32, 33, 38 and new claims 39-48 relate to methods of treating a teat of an animal. In particular, the presently claimed methods comprise the steps of: inserting a device through an orifice of the teat and into a teat streak canal during involution; and retaining the device in position within the teat streak canal without any part of the device penetrating outwards beyond an epithelium of the teat orifice. Referring to Smith,

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there is no disclosure of the dilator being configured to be inserted and held within a teat canal without any part of the device penetrating outwards beyond an epithelium of the teat orifice. While element 10A is rounded allowing it to be inserted into a teat canal, element 10B is flattened and serves as a ready means for handling the dilator. Since Element 10B is wider than the width of the dilator's main body, it prevents the dilator from being fully inserted into the teat canal. Accordingly element 10B of the dilator disclosed by Smith penetrates outwards beyond an epithelium of the teat orifice. Referring to the specification as filed at the paragraph spanning pages 13 and 14, the step of "retaining the device in position within the teat streak canal without any part of the device penetrating outwards beyond an epithelium of the teat orifice" ensures that the device does not act as a vector for foreign material to enter the teat and cause infection.

To be anticipatory under 35 U.S.C. § 102, a reference must teach each and every element of the claimed invention. *See Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379 (Fed.Cir. 1986). "[A]nticipation requires that all of the elements and limitations of the claim are found within a single prior art reference." *See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991). Since the teat dilator of Smith does not teach the limitation "without any part of the device penetrating outwards beyond an epithelium of the teat orifice," the reference does not anticipate the presently claimed methods. Accordingly, the Applicant respectfully requests that the rejection under 35 U.S.C. § 102(b) be withdrawn.

Willard

Claims 1, 2, 5, 13, 15-19, 36 and 37 were rejected under 35 U.S.C. § 102(b) as being anticipated by Willard (U.S. Patent No. 6,221,060). The reference discloses a device configured to be inserted into a male or female animal's urethra. While the document mentions that the device comprises a tubular shaped body that can be inserted into a body passage way or cavity (e.g., an animal's urethra), the reference does not disclose a method of treating a teat of an animal. Willard discloses that the device can be retained entirely within the body once inserted therein (column 3, line 30). However, there is no discussion of the device being inserted into a teat canal, nor of the device's dimension and how these would vary to allow the device to be inserted through an orifice of a teat and into a teat streak canal, and retained in position within the teat streak canal without any part of the device penetrating outwards beyond an epithelium of the

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teat orifice. Accordingly, Willard does not anticipate the presently claimed invention and the Applicant respectfully requests that the rejection be withdrawn.

Sano et al.

Claims 1-5 and 14 were rejected under 35 U.S.C. § 102(b) as being anticipated by Sano et al. (U.S. Patent No. 6,756,048). Sano et al. discloses a long term drug-sustained release preparation. The release preparation allows drugs to be dispensed over time by water infiltrating through openings in a coating. Accordingly, the invention of the Sano patent is intended for use in environments that expose the preparation to significant amounts of water. However, the reference does not disclose a device that is intended for insertion into a teat canal, or features of shape, which would allow the device to be used to treat a teat of an animal, wherein the device is retained in position within a teat streak canal without any part of the device penetrating outwards beyond an epithelium of the teat orifice. Moreover, Sano et al. does not provide any reason for one of skill in the art to treat a teat of an animal by applying the sustained release preparation to a teat. Accordingly, Sano et al. does not anticipate the presently claimed methods and the Applicant respectfully requests that the rejection be withdrawn.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

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CONCLUSION

In view of Applicants' amendments to the Claims and the foregoing Remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any remaining concerns which might prevent the prompt allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: September 8, 2010

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